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Chair

Mr. Dan Ruimy

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● (1540)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome to meeting number 116 of the Standing Committee on Industry, Science and Technology. We are continuing our review of the Copyright Act.

Today we have with us, from the Council of Ministers of Education, Canada, the Honourable Zach Churchill, minister, Nova Scotia Department of Education and Early Childhood Development, as well as Wanda Noel, external legal counsel, Copyright Consortium.

We're going to get right into it. Sir, you have up to seven minutes, then we'll proceed with our questions. You have the floor.

Hon. Zach Churchill (Minister, Nova Scotia Department of Education and Early Childhood Development, Council of Ministers of Education, Canada): Thank you very much, Mr. Chair and committee members.

I do want to recognize Wanda Noel, who has been the counsel for CMEC on the copyright issue for quite some time. I would like to recognize Andrea John and Chris George, in the audience, who are here in a supportive capacity. Selfishly, I would like to inform the committee that my wife and daughter, Katie and Cecilia Churchill, are also in attendance. That's who the baby is.

We very much appreciate the committee's time on a very important issue in this country. There has been substantial conversation around copyright since the 1990s. I think it's important to recognize that we're trying to accomplish two key public policy objectives.

One is to ensure that the rights of authors and creators are protected, that they're fairly compensated for their work, and that that industry can flourish in this country. The other is to ensure that our public education system is able to access the widest range of materials as possible to ensure the long-term success and well-being of our students.

Fundamental to this conversation are two key aspects around copyright. One is fair dealing, and our understanding of fair dealing. A difficult question to understand is what's fair in terms of trying to juggle these two public policy priorities. Luckily for all of us in the room, the courts have done a lot of work for us in that regard, and have worked very hard over the course of 10 to 15 years to establish an understanding of fair dealing in the country, which we, as ministers of education, believe our policies fit well within.

The second question is around the idea of a mandatory tariff to be imposed on the education system. This is something that we do oppose. We support the court's definition of fair dealing. We do oppose a mandatory tariff on education materials.

I think it's important to recognize why that is. We believe that with the scarce public resources in our provincial jurisdictions in this country, we need to ensure that every single dollar that we spend is in the classroom and geared toward student success, achievement, and well-being. A mandatory tariff would take tens of millions of dollars out of our education system, and out of the classrooms of potential future writers and creators in this country.

I think it's important to note that this is not an education sector versus the creative industry issue, although there is some disagreement. We have a vested interest in the success of a vibrant, robust, healthy, successful, innovative, creative sector in this country. In fact, our education system is dependent on that. We recognize that there have been some changes to the economic model of these sectors as a result of technology, the Internet, open source information, and information that's being used in our education systems.

We don't believe a mandatory tariff is the best way to provide support to that industry, because we believe that takes money out of our classrooms where our precious dollars are very much needed.

I do want to discuss two issues that I know have come up in conversations at this committee. One is around the amount of full textbooks that are being copied. I know that's a concern for the industry. That would be a concern for us as well. That would fall outside of the guiding principles of fair dealing and use of copyrighted materials in the country.

Thankfully, we've had the Federal Court of Appeal and the Copyright Board look at this question on two separate occasions, and they've discovered that 98% of copying that does happen in our education system is actually within the context of following the principles of fair dealing. I think that's something that we should take great pride in. Ninety-eight per cent is a passing grade. I don't think we should look at bringing in a mandatory tariff in response to what is a 2% anomaly in our education system.

Also, I know it's been argued that the revenues from the education sector to the publishers and to writers has been impacted by the change in fair dealing and copyright legislation. I think if you look at the Statistics Canada information that we've provided, you'll see that sales have actually gone up for the K-to-12 education sector for books in our country since 2012. That's something that we should also take great pride in. That's happening at a time when technology is changing and the delivery of education in our system is changing.

● (1545)

In closing I do want to state that as ministers of education in this country who are responsible to be stewards of our education system, and who are responsible for delivering high-quality education to our students, we do support the court's definition of fair dealing and I believe our guiding principles are in line with that. We've provided those as well to you, and we are committed to working with yourselves, the federal government, and industry to come up with innovative, creative ways to support that industry to make sure that it's successful and thriving so that we can all benefit from it.

We just don't believe that subsidizing it with money from the classroom is the best way to accomplish that.

I will let the committee know that we're also, as ministers, investing $5 million nationally to further copyright education with our educators to make sure they are very well aware of their roles and responsibilities and also to do further assessments of compliance around copyright. I thought that would be of interest for the committee as well.

Thank you very much for those opening moments, Mr. Chair. I'm very happy to entertain any questions.

The Chair: Thank you very much. We're going to jump right into questions.

Mr. Baylis, you have six minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Mr. Churchill. You say you're interested in supporting a vibrant, Canadian creative industry. How would you do that? I want to talk how about money, because, ultimately, people need to be paid, so I would like to see how you would do that financially.

Hon. Zach Churchill: I think there are various incentives that are in place across the country. There are tax incentives. There are grants for creative industries, and there are competitions. I think we need to look at best practices from one jurisdiction to the next. This is something that as ministers we can work with the federal government on to identify the best way to incentivize growth in that sector and ensure it is, in fact, successful.

What we don't think is necessarily forward looking is to look at a mandatory tariff on the education systems across the provinces as being the best way to do that. Because, again, that will take tens of millions out of our classrooms where those monies are desperately needed. Instead, I think we need to look at more general opportunities.

Mr. Frank Baylis: That tens of millions of dollars, is that what you figure you've been saving since the fair dealing, that part of the act, has applied to education? You said it would take it out, so let's assume that that's about the savings you've seen across the country, tens of millions?

Hon. Zach Churchill: I don't know if I would characterize it as savings. It's dollars that we have not been spending in tariffs that we have been directing into—

Mr. Frank Baylis: Yes, you're not spending it, but if the law hadn't changed, you would be spending it, so therefore you're not paying the creators the tens of millions. Do you how much that tens of millions is?

Hon. Zach Churchill: The tens of millions we based on the $13.31 per textbook tariff that is currently being asked by Access Copyright. That's in response to that particular ask and obviously, as I mentioned, we don't believe that—

Mr. Frank Baylis: I believe Access Copyright says they've lost tens of millions since it's come in and we'll ask them when they come up after you. You're saying you would save tens of millions, or you are saving that?

Hon. Zach Churchill: If we were to have the mandatory tariff forced on the education systems across the provinces, there would be tens of millions of dollars that would come out of our education system.

Mr. Frank Baylis: Fair enough, and you did mention that you think the creators should be fairly compensated for their work. We've had a number of creators come before us, and to be honest with you, I was shocked when they started talking about the drop in income, they said 70% to 90%. But, fair enough, those are statistics. The overall amount that shocked me was they were talking about how they used to get $2,000 and now they're paid $300. I didn't meet anybody who was getting particularly rich off these tariffs.

In fact, I even asked my sister, who happens to be a publisher, and she said, yes, she gets a cheque from Access Copyright. I can't remember what it was, it was a few hundred dollars. It was insignificant to her. She couldn't be bothered to look it up.

What would be fair compensation for someone who writes a book? Maybe they spend a year writing a book, so what would be fair compensation?

● (1550)

Hon. Zach Churchill: That's a difficult question for me to answer as a minister of education.

Mr. Frank Baylis: Give me a ballpark.

Hon. Zach Churchill: I'm not going to try to provide information that wouldn't be accurate and speak outside of my expertise, and, Member, I hope you can appreciate that.

What I can point to is we recognize there's a whole host of factors that are impacting publishing in particular. The textbook isn't the primary source, or is becoming less of a primary source of information, in our classrooms. The Internet is changing the face of the publishing industry. Technology is forcing that industry to evolve and it's creating challenges. We recognize that.

But when you look at the actual revenues from the K- to-12 system, those revenues to the publishing sector have actually increased, and again I'll reference the statistics—

Mr. Frank Baylis: When you say they're growing, how much of those are going to Canadian content providers as opposed to international?

Hon. Zach Churchill: Wanda will help me answer that for you.

Ms. Wanda Noel (External Legal Counsel, Copyright Consortium, Council of Ministers of Education, Canada): If you look at the handout, you will see that Canadian publishers' sales of their own titles in K-to-12 educational institutions have gone up in 2012 and 2016, in that graph.

Presumably Canadian publishers' own titles are Canadian content, so they're increasing.

Mr. Frank Baylis: On publishers' sales of their own titles, you're saying that Canadian publishers last year went from $300,000 to $400,000. Is that correct?

Ms. Wanda Noel: It's actually in millions.

Hon. Zach Churchill: Three hundred million dollars.

Ms. Wanda Noel: Yes, the graph contains Statistics Canada data. They study the publishing industry nationally, and this was extracted from studies that were done of the publishing industry in Canada, in 2012, 2014, and 2016.

Mr. Frank Baylis: Fair enough. In 2012, though, you would have been contributing before the law; and in 2016 you would not have been contributing. Is that fair to say?

Ms. Wanda Noel: No, I don't think that's fair to say.

Mr. Frank Baylis: What did you change, then, when the law changed? Why are you trying to defend your fair dealing if it doesn't have an impact for you? I need to understand that. If it doesn't have a financial impact, why do you need to defend it?

Why are so many people coming here to defend it and at the same time saying it has no financial impact? There's a reason that you want to defend it. You just said tens of millions. Can you make that link?

Hon. Zach Churchill: A change of understanding in fair dealing, we believe, would have a financial impact. In the way fair dealing is defined right now, if you have a short excerpt of materials—

Mr. Frank Baylis: I know what fair dealing is, but you're defending it because you want to save money. Is that fair to say?

Hon. Zach Churchill: We're defending it because we believe it's fair. The courts have gone through extensive deliberations and decisions to come up with this. It's quite complicated to develop what's fair from an academic learning standpoint, to ensure our students have access to the widest range of materials possible, and obviously ensuring that creators are properly compensated.

That's not an easy question to answer. The courts have helped us do that.

The Chair: Thank you.

We're going to move to Mr. Lloyd. You have six minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you for being here at committee today.

My first question will be in regard to previous testimony that was provided by your organization in 2011 when the committee was reviewing the Copyright Modernization Act. Your group appeared before committee and promised that the addition of education to fair dealing would have no negative impact on creative incomes, and that you would pay collective licences and would continue to do so after the amendment; that you were not trying to get material for free. Since 2012, you're claiming vast amounts of work for free. There have been hundreds of millions of pages printed. That's been documented. You have not been paying collective licences, and creative incomes have been in serious decline.

Do you still stand by the earlier testimony provided in 2011, that there would be no impact on creative incomes?

Hon. Zach Churchill: We benefit today from having Wanda Noel, who was actually present during that, who can speak better to the comments of the minister of the time. In terms of the hundreds of millions of dollars of copies that we've seen used— that number—I do think it's important to question where that number comes from. We have not seen evidence on our side showing that this is an accurate figure. In terms of what we do know, based on the Federal Court of Appeal assessment and the Copyright Board assessment, 98% of copying that happens in this country in the education system is within the parameters of fair dealing.

We don't know where that number comes from. I think it's important to have a better understanding of where that number comes from.

● (1555)

Mr. Dane Lloyd: I believe it's a PricewaterhouseCoopers number, and that's an internationally recognized auditing agency. Presumably, if that's the number that they're coming up with, there's some sort of evidence behind that. The evidence that you brought today, that there are savings of tens of millions of dollars, is also backed up by PricewaterhouseCoopers information, which indicates that since 2012 authors and publishers have lost $30 million because of fair dealing. This seems to corroborate the evidence that you provided that this does cost tens of millions of dollars for universities to provide collective licensing.

You have talked about the precedence in cases, but in regard to the recent York decision, which happened after the Supreme Court's ruling on fair use, do you still feel that you're on the right side of the law after that?

Ms. Wanda Noel: There are a lot of questions there.

Let's deal with Minister Jennex's comments in the Copyright Modernization Act. Minister Jennex's statement in 2011 or 2012 was correct. It's still correct. That's because adding education as a fair dealing purpose, which is what happened when the Copyright Modernization Act was passed, had nothing to do with the fair dealing guidelines. The fair dealing thresholds and guidelines are based on Supreme Court of Canada decisions that took place after the Copyright Modernization Act was passed. That's one thing. I saw a headline recently that said something like Minister Jennex lied to Parliament. Well, that's not correct, at all. It's just wrong.

On your reference to the PricewaterhouseCoopers' report, the origins of that was one report that was filed at the Copyright Board by Access Copyright, who is in the audience this afternoon, and another expert report that was done by Deloitte. When you're in a Copyright Board proceeding, you have duelling experts. That PricewaterhouseCoopers' report took one point of view. There was a corresponding study that said everything in that report is incorrect.

It's duelling economic experts. I would be more than happy, on behalf of Minister Churchill, to provide a copy of the other expert report that said PricewaterhouseCoopers is wrong.

Mr. Dane Lloyd: Is that a Deloitte report that you're referencing?

Ms. Wanda Noel: I think it was Deloitte. It was several years ago now, but I can provide the report.

Mr. Dane Lloyd: Maybe you could clarify it after.

Thank you.

Ms. Wanda Noel: The other thing, the York case—sorry, I'm not going to take up time here—is under appeal, and we have multiple cases interpreting fair dealing consistent with what Minister Churchill said. We have one case that has a different interpretation. We'll let the courts do their work, and they can figure it out.

It's based on evidence and a very complicated process that can't take place in a parliamentary committee.

Mr. Dane Lloyd: This is very interesting stuff that has been provided here.

How much would you say you spend on Canadian content? One thing that we've seen throughout our testimony is that universities indicated total spending is up. We've seen that coming from international publishers, international authors, in terms of the scientific and engineering fields.

Can you provide some specific information on how much Canadian content creators have benefited? Has there been increased spending on Canadian content creators since 2012?

Hon. Zach Churchill: The numbers we have available are provided to you in your package. I don't know that we can extrapolate Canadian content specifically from those numbers.

Mr. Dane Lloyd: Thank you.

The Chair: If you can forward the report that you were referencing to the clerk, that would be very helpful. Thank you.

We're going to go to Mr. Masse.

You have six minutes, sir.

Mr. Brian Masse (Windsor West, NDP): Thank you, Minister, for being here today.

Essentially the bottom line here—I want to make sure it's clear—is that just for your province, it's $10 million. Is that correct in terms of the cost if there was a change?

Hon. Zach Churchill: If the proposed tariff at $13.31 was imposed nationally, that would be over $50 million.

Mr. Brian Masse: Nationally, okay. Does that include the territories as well?

Hon. Zach Churchill: That does include the territories. That doesn't include Quebec. That is one thing I forgot to mention. I'm here representing the education ministers outside of Quebec, but that does include the territories.

Mr. Brian Masse: Okay, I wanted to make sure on that.

Now with the old system in place, has there been any work done in terms of what the cost differential would be for today? I mean, that's new money that you're being asked to pay if that is brought forth in terms of the fee.

Do you have any idea of what the cost would have been had Access Copyright not proposed that and it was the status quo, before even fair dealing was brought in? What would your costs be today if the old system were in place? Has that been looked at?

● (1600)

Ms. Wanda Noel: The rates of the tariffs are set by the Copyright Board, and they're almost constantly appealed.

Prior to the tariff system, the fee was around $2.50 for a full-time student equivalent. The Copyright Board set a tariff that was $5 and pennies. It ended up at $4.81 when the appeals were exhausted. There are four million students, so it's four million times $5. You can do the math.

That was the case that the ministers of education took to the Supreme Court of Canada, and the decision was that short excerpts could be copied by teachers without paying copyright royalties. Then, in 2013, based on that decision, the ministers of education stopped paying the tariff, and decided to rely on fair dealing and licences, databases and repositories, and other things to meet their copying needs.

That's the range.

Mr. Brian Masse: Would it be fair to say there has been a cost savings, fewer expenditures, in that process because of that?

Ms. Wanda Noel: No, the money that's spent, as you'll see, is increasing. It's just not being spent on the same things. It's being spent on something different.

Mr. Brian Masse: Yes, this is what we're running into.

In general, though, what we're hearing from not only the witnesses.... I know you have StatsCan stuff in front of us. When we have witnesses and people coming forward, it's not always representative of the full picture; there's no doubt. But it would seem to me we're running into a pattern of experiences, where there seem to be some winners and losers in the transition.

When government policy changes something, I think there's probably some expectation that there should be some amelioration or some public policy to help. Do you believe there have been any changes from your experience in the works you've been purchasing or your interaction with some of the content providers, maybe in your own province? Has there been any look as to whether there's been a shift since this has taken place?

Some authors say they've given up. They're not producing anymore. They have reduced their amounts. Has there been any examination to find out whether Nova Scotia has transitioned to new content providers, or has it just been the same?

Hon. Zach Churchill: There's been a move in our jurisdiction to more local content, so we've partnered with our African Nova Scotian community, our indigenous population through the Mi'kmaq nation, local writers to ensure there's more local content in our curriculum. There has been a move in that regard in Nova Scotia that I can speak to very specifically, and I think that has happened in other jurisdictions as well.

The fundamental question here is this. How do we define what's fair, between the needs of the industry, which we recognize, and the needs of the education system? The courts have done a lot of work for us around the idea of fair dealing. They have heard extensive testimony from both sides and have come up with a definition that we believe makes sense, and that we don't want to see thrown out overnight.

Mr. Brian Masse: I understand. I guess I'm looking for the response.

Any time I hear that the courts are dealing with a process, that's a failure of public policy, from our point of view federally...in this particular instance. We make decisions here that need sorting out in other jurisdictions, because they still haven't fully.... Perhaps with the complexity of copyright and the changing ways things are done, it was bound to end up there in some way anyway.

I'm looking for the things that were done, or could be done, to help some of the artists who are still transitioning here. That's what I'm curious about. In terms of your representation of the provinces, was there any overall plan, or is it each province? You mentioned Nova Scotia and what you've done. I represent an area of the underground railroad to Canada, so I know some of the stories directly that link my community to yours. Do you know if the other provinces are doing more comprehensive work to try to bring forth local culture, maybe new artists and new content providers?

Hon. Zach Churchill: It does vary from province to province, and it's primarily in the field of the heritage departments, the culture departments, that exist provincially.

As a representative of the education system, I think we're doing our part to make sure we have more local content, particularly around parts of our history that haven't been told from a local perspective.

● (1605)

Mr. Brian Masse: Thank you, Mr. Chair.

The Chair: We're going to move to Mr. Sheehan.

You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much, Minister.

I appreciate your being here, as well as Wanda, to help us with this copyright review today,

Recently we did a cross-country tour that allowed us to hear from various regions, various school districts, authors, and universities and colleges from coast to coast. When we were in Toronto, we heard testimony from someone who was fairly good, and who likened it to the 401, which is their superhighway, where someone will drive 100 when they first get their licence but then go up to 105, 110, and so on, then it's 120, and next it's the autobahn. She likened that to copyright, where someone takes one copy just because, and then so on. Then fast forward, we heard testimony from some authors in western Canada about their whole works being photocopied and distributed to classes.

What steps do school boards or the provincial ministers of education take to educate teachers and students on the copyright laws, and what kinds of policies do they put in place?

Hon. Zach Churchill: That's a really important question, because this is important to us as well.

We want to be following the guidelines of fair dealing, which means short excerpts only can be photocopied. We have heard anecdotally that there are examples of educators photocopying a full textbook, for example, and distributing that. The evidence, though, which has been assessed by the Federal Court of Appeal and the Copyright Board of Canada, indicates that in 98% of cases, photocopying is happening within the confines of fair dealing.

I think part of our success in that regard is due to the education we're providing to our educators. We do have manuals that are distributed to every single school in the country. We have these sorts of posters that are supposed to be at every single photocopier to inform people.

As ministers of education, we are further investing money, $5 million, to enhance our education on copyright and on the roles and responsibilities of teachers and to do further third party assessments on how we're doing. The Federal Court of Appeal and the Copyright Board of Canada consistently say 98% of the photocopying is happening within fair dealing. We're going to spend some money to utilize an independent third party to come in and provide us with an additional assessment to make sure we're doing our part, because we do not want to be operating outside of the realm of fair dealing. We do have a vested interest in the success of our creative industries. Our education system is dependent on them. We need to make sure that short excerpts of information from a wide range of sources are accessible to our students and available and affordable.

Mr. Terry Sheehan: You've indicated that 98% are complying. For the other 2%, do local school boards or schools monitor that, and, if so, how? If they find a student or a teacher not in compliance, what steps are taken?

Hon. Zach Churchill: In terms of enforcement, oftentimes that process will vary from province to province, from school board to school board. As with any rule that teachers are supposed to be following or that our administrators are supposed to be following, there's a process in place in each one of our jurisdictions to ensure that the rules are being followed.

If something happens, it's dealt with either through a performance mechanism or through disciplinary action, depending on what's appropriate. Those processes do vary from jurisdiction to jurisdiction, but they're there.

Mr. Terry Sheehan: I was formerly a school board trustee, many, many years ago. The funding models have changed. In different jurisdictions in Ontario the mill rate is set not by the school board trustees but at the provincial level. Are the provinces and the school boards putting more money aside for copyright? Is it staying the same? One of the questions we had was how copyright was being funded and whether there are mechanisms in place for the province or the school board in that district to put more money into copyright.

● (1610)

Hon. Zach Churchill: The number of dollars we're spending to purchase materials for our education systems is going up as a whole.

As the Council of Ministers of Education, Canada, collectively we'll be putting forward $5 million to enhance education around copyright and to, as I mentioned earlier, do further assessment on compliance with the rules around fair dealing.

The Chair: Thank you. We're good.

[*Translation*]

Mr. Bernier, you have five minutes.

Hon. Maxime Bernier (Beauce, CPC): Thank you.

I just want to go back to the cost. My colleagues have asked a number of questions about what it costs you. Since 2012, how much do school boards spend annually on average to acquire copyright?

There is another question the committee has wondered about since its hearings on the matter began. Under the new Copyright Act, has that amount increased or decreased, and by how much roughly?

I would like you to clarify those figures.

[*English*]

Hon. Zach Churchill: Since 2012—and the numbers from Statistics Canada are in your packages—the sales by the publishing industry to the K-to-12 or the P-to-12 education system have gone up. Book sales have gone up from 2012 all the way to 2016, and you see those numbers detailed in each of those graphs there.

Hon. Maxime Bernier: Do you think you saved some money at the end, or are you paying more for these rights?

Hon. Zach Churchill: We're paying more in materials, but the nature of those materials is changing. We are investing more in course materials in our education systems. What we're worried about is the mandatory tariff that would—if the proposal is accepted—take approximately $53 million outside of our education system as a subsidy to the industry. So that is something that we are concerned about and that number is not reflective of Quebec. That number is reflective of all the provinces involved in the consortium on copyright, but that is where we do have a concern because those dollars are precious. That is the equivalent of hundreds of teaching positions and specialized resources in our classrooms. That number will have an impact on education delivery for our students.

Hon. Maxime Bernier: So your point of view is to keep the status quo and what the court decided is the definition of fair dealing. Are you comfortable with that?

Hon. Zach Churchill: We support the court definition of fair dealing. It's not an easy question to answer. I think the courts have done us a service in terms of tackling that important question over the course of 10 years. I do think it makes sense that if you're only photocopying an excerpt of a text, a chapter, or an amount that does not exceed 10% of the text, that we're able to use those resources in the classroom to make sure that our kids have access to as wide a range of information as possible.

Hon. Maxime Bernier: Do you think we need a more detailed definition in our own legislation to reflect the court decision?

Hon. Zach Churchill: We're not advocating for any changes to definitions in the Copyright Modernization Act enacted in 2012. We believe the case law has done that work for us.

Hon. Maxime Bernier: Do you want to add something?

Ms. Wanda Noel: No.

Hon. Maxime Bernier: That's it.

The Chair: Mr. Longfield you have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thank you, Mr. Chair, and thank you for being here, both of you.

I want to build on where Mr. Bernier was going with some of those questions. We can see from the curve the dollar volume increasing, but there are several things that we don't see, such as how much is going towards copyright fees within those dollar numbers. Another way of saying that might be, what's the average unit price of the books and is that going up? But are we actually reimbursing authors through publishers, through distributors, and are we collecting the fees to go to the creators?

● (1615)

Ms. Wanda Noel: If I may, the answer to that question is found in the contracts that are entered into between publishers and authors. They divide up the pot, and that would vary on how prominent and important the author is. The prices are set and the education system doesn't have any control over that. The publisher and author divide up the pie.

Mr. Lloyd Longfield: Understood, but you can see that what I'm getting at is—and you may not be able to answer this because it's maybe for the publishers to say—the dollar volume really doesn't get to the root of the question that we're trying to answer. That's something that we've been a little frustrated with as a committee, trying to get into the supply chain to see exactly where the leakages are. When we talk about 2% leakage on legitimate copying versus non-legitimate copying, what's the dollar on 2% of the whole? We're not talking about 100 pages here, we're talking about millions of pages that the school boards would be copying, and 2% of that figure could actually be a pretty substantial number. Would we know what 2% leakage costs?

Hon. Zach Churchill: We actually have done the math, and if you're looking at it per student, that would be two copies per student per school year. So two illegal copies per student per year, looking at that 2%.

Mr. Lloyd Longfield: We certainly had contrasting opinions from other witnesses on how many copies

Hon. Zach Churchill: If we accept the 600-million-copy figure that's been presented, if you look at 2% of that—I wasn't a math major by the way—

Mr. Lloyd Longfield: That's okay; I was.

Hon. Zach Churchill: —what we've come up with is fewer than two copies per student per school year.

Mr. Lloyd Longfield: Yes. What about the cost of administering the current program? You're mentioning $5 million in advertising costs. There are posters being printed that are being put above photocopiers. I'm guessing, the way people are, that they'll see the poster and they may or may not read it. The second time, they won't even see the poster. There are costs that are being put toward trying to administer the existing program. Those costs could be taken away if a standard licensing fee was charged that would be equivalent in dollar value to what the hidden costs are in terms of reimbursing authors. On the cost of the existing program, do we have any idea of how many person-hours go into administering programs, teaching people about copyright requirements, policing the services, the auditor costs that you're using? Do you know how much it costs to administer the existing program?

Hon. Zach Churchill: As ministers, we do have an obligation to inform our educators of the law and ensure there's compliance. That's not just the cost associated with copyright, that's a cost associated with the variety of roles they have to function under.

In terms of our quantifying how much money we're going to spend in resources to educate and to further assess compliance, we have that number at $5 million, which is drastically lower than the $50 million-plus—

Mr. Lloyd Longfield: Is that a Nova Scotia number or is that a national number?

Hon. Zach Churchill: That's a national number.

Mr. Lloyd Longfield: Okay.

I'm yet to be convinced, but I'll hand it back over to you, Mr. Chair.

The Chair: Before I move on, I would just like to have a point of clarification.

You had mentioned two copies. Is that two pages, or it two copies of works?

Hon. Zach Churchill: It's pages.

The Chair: It's two pages. Okay, thank you.

We're going to move to Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you both for being here today.

Throughout the education testimony back in 2011, many representatives of the education sector explicitly stated that institutions would not stop paying licensing fees to licensing collectives, like Access Copyright and Copibec, if education was included under fair dealing. On December 5, 2012, a new act came into force. Access Copyright was served with a letter from you, Ms. Noel, on behalf of CMEC and the Ontario school boards saying that they would no longer be complying with the tariff regime.

Can you explain this discrepancy between the testimony in 2011 and the 2012 letter to Access Copyright?

● (1620)

Ms. Wanda Noel: I certainly can.

Your colleague beside you asked the same question. The decision to no longer rely on the Access Copyright tariff but other sources of copyright clearance has nothing to do with the adding of education to the list of purposes for which fair dealing can be engaged in. That decision to not pay the tariff is based on the Supreme Court of Canada decision only. If the Supreme Court of Canada had issued a decision that was different from the one it did, there would have been no opting out of the tariff system.

Prior to that decision, it was not clear whether teachers could make a copy of a short excerpt—"a little bit" was the term being used—for each of the students in their class. It's called "multiple copies for classroom use". You have a classroom with 30 students in it. You want a copy of a newspaper article. Can the teacher make a copy for each student in the class? It was thought, up until that Supreme Court decision, that you could only make one copy, that making multiple copies for a class of students was not allowed. That decision made a profound change on the law on fair dealing, but had nothing to do with adding education as a fair dealing purpose. The Supreme Court decision happened in July, and the opt-out was the following January 1.

Mr. Matt Jeneroux: Okay. We go back to specific things that were said by Universities Canada—and I have the quote in front of me, but due to time, I won't bother reading it into the record—that said that absolutely under no circumstances would they be opting out of this. This was said in front of committee, and then you issue this letter to CMEC. I'm trying to—

Ms. Wanda Noel: You're trying to understand.

Mr. Matt Jeneroux: I'm trying to understand what happened from that moment to this moment, to now essentially putting us where we're at today.

Ms. Wanda Noel: Okay. I'll try.

Education was added as a fair dealing purpose in 2012. That was in the spring and summer. In parliament, the question to Minister Jennex was, "Will adding education to the fair dealing provision as a new purpose have any impact on you paying the rights holders?" Her answer was no, it would not, nor did it.

Then, fast-forward to a Supreme Court decision that interpreted fair dealing far more broadly than anyone ever anticipated. The decision was that copying for student instruction is fair dealing as long as the excerpt is short. That was a much broader interpretation of fair dealing, and that in turn, six months later, led to the decision not to take up the Access tariff any longer because it wasn't providing value for money. There were millions and millions of dollars being spent for a licence that didn't have any value anymore because of the Supreme Court decision, not because of adding education as a fair dealing purpose.

Mr. Matt Jeneroux: I have one minute left. We'll have Access Copyright in front of us later, hopefully to clarify some of that.

I do want to get this from you, Honourable Minister Churchill. On average, in proportion to their total annual budget, how much money do Canadian schools and school boards spend each year to acquire copyrighted works?

Hon. Zach Churchill: We don't have that number for you, but we'll see if staff can provide that to the committee.

Mr. Matt Jeneroux: Okay. Thanks.

The Chair: We're going to move to you, Mr. Jowhari. You have five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. I'm going to split my time with Mr. Baylis.

Thank you, Minister, for being here.

Minister, CMEC published its own fair dealing guidelines. Can you help me understand the process that CMEC went through to develop those guidelines? Who did you consult with?

● (1625)

Hon. Zach Churchill: Ms. Noel was there for that process, so I'll let her answer very specifically.

Ms. Wanda Noel: When the Supreme Court of Canada decision came down in 2012 interpreting fair dealing broadly to say that copying short excerpts for student instruction was permitted or was fair, we were faced—"we" being legal counsel for colleges, universities, and the Council of Ministers of Education—with a situation where we had to put some meaning around what is a short excerpt. The Supreme Court said that you can copy short excerpts for students in a class, but it didn't say anything about what short excerpts were.

There were a number of sources that guided us in developing the limits that are in the fair dealing guidelines.

On the same day that the Supreme Court decided how fair dealing should be interpreted in an education context, they issued another decision, which interpreted fair dealing for the online sale of music. In that case, they did put some numbers around the amount that could be copied under fair dealing, and in that case, it was previews. When you buy music online, you can preview it. You can listen to a piece of it. It was 30 to 90 seconds of a four-minute song. At 30 seconds out of four minutes, that's 12.5% of the musical work. That was one source.

We also were looking at case law in the United States, where, as there is here in Canada, a dispute is going on between publishers and a university about how much could be copied for the use of students. In those decisions, which have now gone up to the federal appeals court, back down on reconsideration, and back up again, with no decision yet, the threshold of 10%, or a chapter, was used many times in the court's decision, finding that this threshold was fair.

Mr. Majid Jowhari: Let me ask a very specific—

Ms. Wanda Noel: I just want to make one other point, because the fair dealing guidelines are a conservative interpretation of "short excerpt". As for why they're conservative, around the world, if you want to go outside of Canada, in Israel there was a dispute between the higher education community and publishers. There, the threshold is 20% of a work.

Mr. Majid Jowhari: As part of your review and the development of the guidelines, did you talk to content creators to get their input of what fair dealing means?

Ms. Wanda Noel: We were in years of litigation with them. No, we did not, because there was no possibility of ever coming to an agreement.

There still isn't today. That's what's before this committee. No.

Mr. Majid Jowhari: Okay. Thank you.

Mr. Frank Baylis: I want to delve in quickly on your statistics. They are very interesting, but I'm concerned they might be a little misleading.

When you did this, you used Statistics Canada. Did you get it in what we call average dollars? Did you put it back in the same dollars?

Ms. Wanda Noel: Do you mean constant dollars? Yes.

Mr. Frank Baylis: This is a constant dollar charge that you applied—

Ms. Wanda Noel: I believe so. I asked the same question.

Mr. Frank Baylis: Did you apply the inflation rate against it?

Ms. Wanda Noel: Constant dollars was the answer I was given to that question.

Mr. Frank Baylis: It doesn't tell us what dollar then.

I can see there's a mistake here too. That's why I've started wondering about it. It says that 66% of all Canadian sales are book sales. That's a bracket there. I have done the math quickly. I can't find any one at 66%. This led me to question some of your math.

Are you absolutely certain it's in constant dollars?

Ms. Wanda Noel: There are statisticians who work at the Council of Ministers. I'm not one. They produce the list.

Mr. Frank Baylis: I know there are. I'm just asking. They made a mistake on one point here, so I'm asking if you can confirm to us that it's in constant dollars.

Ms. Wanda Noel: I asked the question. That was the answer. Yes, it is in constant dollars.

Mr. Frank Baylis: Can you provide—they also have a consumer price index, specifically for education—how these numbers reflect the changes with respect to education?

Ms. Wanda Noel: If StatsCan has data on that, we could do it.

Mr. Frank Baylis: StatsCan does have data on the consumer price index, specifically for recreation and education. Could you compare that to that index, how these are changing with respect to that index? You said they are in constant dollars. Perhaps you could tell us which one.

Ms. Wanda Noel: How changing with the CPI was one, and what dollar is the constant dollar?

Mr. Frank Baylis: Yes. Constant dollars. You said here—maybe I misunderstood it—66% of all sales. Maybe that's correct too. I couldn't do that math. Could you have that clarified for us as well?

Ms. Wanda Noel: What would the clarification be? Would it be on the 66%?

Mr. Frank Baylis: It says here these are book sales in Canada, these are book sales in Ontario, and in brackets this accounts for 66% of all Canadian sales. I just did the math. I multiplied this number by that number, and it doesn't add up.

● (1630)

Ms. Wanda Noel: I will get that out of Hansard and pass it on to the statisticians to see if I can get the answers.

Mr. Frank Baylis: So there are three questions. One is which constant dollars it's in. Two, could we have this comparison against the rate of change here versus the rate of change in the consumer price index, specifically for education? Seeing how much of your education budget...is it constantly what you're spending in Canadian books, or is it going down or staying the same?

Do you understand?

Ms. Wanda Noel: I can get your exact question out of Hansard.

Mr. Frank Baylis: That's it. The third one is, and maybe I've misunderstood something...but please clarify that too.

The Chair: Thank you.

For the final two minutes, we have Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

To follow up with your two copies per student, I'd just like to get an idea of where that came from in terms of the accumulation of that data. Also, have you had specific cases where there was significant copyright infringement? What were the repercussions to the people who were doing that? What's your policy on that?

How did you get the numbers? There are many students, I'm sure, who would do copyright infringement, but have there been major cases, and what happens to those individuals with regard to those cases?

Hon. Zach Churchill: That number comes from the 600 million pages that the industry has told us are being made free every year in Canadian schools. Again, we don't know if that number is accurate. If you look at 2% of that based on the Copyright Board of Canada and the Federal Court of Appeal saying only 2% of copying is falling outside of fair dealing, that's 12 million copies. We have seven million students, so that's approximately two copies per student per school—

Mr. Brian Masse: Yeah, you just applied their own numbers. Really it's their own data.

Hon. Zach Churchill: That's using the data from the industry.

Mr. Brian Masse: Is it province by province, the repercussion with regard to copyright infringement?

Hon. Zach Churchill: The mechanisms in place for performance issues or disciplinary action does differ from jurisdiction to jurisdiction, even specifically sometimes from board to board.

Mr. Brian Masse: Thank you, Mr. Chair.

The Chair: On that note, I would like to thank Ms. Noel and the Honourable Zach Churchill for being here today with us and answering some pretty hard questions. You can tell we're a very inquisitive group over here. We're trying to get to the core of this. I want to thank you both for coming and speaking with us today.

We're going to suspend for a very quick minute while we change over our panels.

Thank you very much.

● _____ (Pause) _____ ●

● (1635)

The Chair: Welcome back, everybody.

For the second hour, we have with us from Copibec, Frédérique Couette, executive director. From Access Copyright we have Roanie Levy, president and chief executive officer.

We are going to start with Copibec.

[*Translation*]

You have seven minutes.

Ms. Frédérique Couette (Executive Director, Copibec): Hello. Thank you for inviting me here today.

My name is Frédérique Couette. I am the executive director of Copibec, the Société québécoise de gestion collective des droits de reproduction.

Established in 1997, Copibec is the management collective of the community of Quebec authors and publishers. It is a non-profit organization. We collect royalties and pay them to authors, freelance journalists, creators, and publishers after covering our management fees.

About six years ago, we appeared before the committee with regard to Bill C-32. At that time, we warned MPs about the risks and potential abuse associated with introducing the word "education" into the fair dealing exception. The education sector officials offered reassurance. They said they would never end the licences with collective societies. They said it was merely a clarification with no tangible negative consequences for copyright holders.

As of January 2013, however, those same officials started terminating their agreements with Access Copyright. The situation has gone downhill steadily ever since. They claimed the right to establish copying policies that allowed them to reproduce a chapter or 10% of a work, according to the broadest possible interpretation, so they would no longer have to pay royalties to copyright holders through their collective society. The ministries of education outside Quebec have gone so far recently as to sue copyright holders through Access Copyright, while at the same time refusing to pay the minimal royalties established by the Copyright Board of Canada in 2017.

The situation is worrisome in Quebec as well. In June 2014, Université Laval adopted a copying policy based on the one used by educational institutions in the rest of Canada. The other universities in Quebec, the CEGEPs, and the ministry of education are still working with Copibec, but each time an agreement is renegotiated, the royalties are further reduced. The annual royalty per university student has accordingly fallen by close to 50%, from $25.50 in 2012 to $13.50 in 2017, while the CEGEP rate has fallen by 15%.

Unfortunately, we have to recognize that our fears have for the most part been realized. The licence revenues of copyright holders are vanishing under pressure from the education sector, lawsuits are multiplying and dragging on, while intellectual property is being steadily devalued with each licence negotiation. Although Copibec has maintained its 15% management fees, the royalties paid to authors, creators, and publishers have fallen by 23% for each page copied by universities.

The universities told you about the millions of dollars allocated in their acquisition budgets to access the content of major foreign publishers of scientific journals. Yet about 80% of the reproduction declarations that we receive, regardless of the level of education, pertain to the reproduction of books and not international journals. It is not the large international publishing groups that have suffered from declining royalties, but our small and medium-sized publishers, our own publishers, for whom royalties account for 18% of net profits on average. For certain book publishers, royalties can account for as much as 30% of net profits. These revenues also make a significant contribution to the long-term survival of specialized Canadian and Quebec journals and can be the deciding factor in a publication's survival or demise. For our authors who are already in a difficult position, any drop in revenue in the copyright chain affects their financial ability to create.

Quebec's experience is nonetheless an example of collective management that allows for the negotiation of agreements between users and copyright holders. I am not saying that everything is great, because that is not the case. In fact, if nothing is done to correct the disastrous effects of the changes made in 2012, the situation in Quebec will only worsen and we will see a steady drop in royalties, if not their complete disappearance.

Quebec university students currently pay $13.50 per year for the Copibec licence. That amounts to less than half a per cent of a student's annual tuition fees in Quebec. Further, there is nothing in the agreements signed with the universities—they are signed with the universities and not the students—that requires them to pass those costs on to the students. For Concordia and the University of Montreal, for instance, this represents 0.08% and 0.07% of their annual operating budget for 2017-18 respectively.

Tuition fees are not higher in Quebec than in the rest of Canada. Paying royalties for the reproduction of excerpts of works has never jeopardized the Canadian education system or led to excessive student debt.

The fair dealing exception for education has been presented to you as the best way to access works. We are extremely puzzled by those statements, which are not backed up by any relevant evidence. At the same time, we know that collective management has always included this aspect of access to works, including digital works, owing to the agreements signed with foreign management organizations that belong to the International Federation of Reproduction Rights Organisations, or IFRRO.

Collective management is an undeniable benefit of a balanced act, as it balances access to works and ease of management on the one hand, with the compensation of rights holders through the payment of reasonable royalties on the other. It not only promotes direct access to knowledge, but also preserves creativity and cultural diversity for the future. It is for good reason that UNESCO considers collective management "an essential element in the construction of a modern national system of protection of copyright which would effectively promote a dynamic cultural development."

Fundamental rights protect the compensation of authors and publishers. The Universal Declaration of Human Rights provides that all work should be paid and protects intellectual property. Copyright and all its elements is also intrinsically linked to authors' freedom of expression as it allows them to earn independent income that supports independence of thought.

Mr. Chair, vice-chairs, and members of the committee, thank you for your attention today. I would point out that our demands reflect a modern and forward-looking approach for a society that invests in its culture in the digital age. Collective management is not a model of the past, but rather a contemporary model that guarantees access and cultural diversity. The decisions you will make at the end of the current review will profoundly affect the future of the book publishing sector and cultural development in Canada.

I will conclude my presentation by quoting from the Creative Canada Policy Framework, published in 2017, regarding the review of the Copyright Act:

> [...] Our copyright framework remains a vital part of our creative economy, and will continue to do so in the future. A well-functioning copyright regime should empower creators to leverage the value of their creative work, while users continue to enjoy access to a wide range of diverse cultural content.

Collective management is consistent with these and the other objectives of Canada's cultural policy.

Thank you.

● (1645)

The Chair: Thank you very much.

Ms. Levy, you have seven minutes.

[*English*]

Ms. Roanie Levy (President and Chief Executive Officer, Access Copyright): Thank you for the invitation to appear before this committee.

My name is Roanie Levy, and I am president and CEO of Access Copyright. Access Copyright is a not-for-profit copyright collective created in 1988 by Canadian creators and publishers of textbooks, trade books, newspapers, magazines, and journals to manage the reuse of their works.

The copying that creators used to get paid for is now being done for free under so-called fair dealing guidelines. These copying policies reflect the education sector's interpretation of fair dealing, and were developed without the input or support of creators and publishers. These copying policies, which mimic the copying limits that had previously been paid for under the Access Copyright licence, effectively replaced the collective licence with an uncompensated exception under the guise of fair dealing for education.

The outcome is that 600 million pages of copyright-protected content is being copied for free each year by the education sector. This is content that is not licensed through academic libraries or made available under open access licences. Royalties collected by Access Copyright from the education sector have declined by 89% since 2012. Historically, these royalties represented 20% of creators' writing income and 16% of publishers' profits. The estimated loss of licensing royalties to creators and publishers due to the education sector's interpretation of fair dealing is $30 million a year. To this loss we must also add the loss in primary sales due to the substitution effect of free content copied under the education sector's copying policies.

I have structured my remarks today around four questions, which I hope will be helpful to the committee. One, when the act was amended, was it Parliament's intent to eliminate the collective licence and replace it with an uncompensated exception? Two, are the copying policies supported by the teachings of the Supreme Court of Canada? Three, are the copying policies damaging to the writing and publishing sector in Canada? And four, what should be the true purpose of fair dealing for education?

To learn what was intended and understood by the addition of education to fair dealing, it is useful to refer to the representations made by the education sector during the legislative hearings on the bill. Representatives from the education sector repeatedly and emphatically assured the legislative committee that the changes would not result in the education sector stopping to pay for the copying of works. Fair dealing for education, according to their testimonies, was not going to replace the collective licence.

For example, Paul Davidson, president of Universities Canada, said the following:

> In particular, it has been suggested that the education community does not want to pay for educational materials and that Bill C-32, especially the addition of education as a new fair dealing purpose, will undermine the publishing industry in Canada and decimate the revenues of copyright collectives such as Access Copyright.... These claims are false and are not supported by the facts.

Similar assurances were made again and again by representatives of the elementary and secondary sector. "We are not asking for anything for free" was repeated numerous times.

The Honourable Ramona Jennex, as was mentioned earlier, came before the legislative committee and said:

> Nothing in Bill C-32 alters the current relationship among education, publishers, content providers, copyright collectives, and the Copyright Board.

Although replacing the collective licence with an uncompensated exception was not intended with the introduction of education to fair dealing, we now know that this is exactly how the education sector acted following the coming into force of the Copyright Modernization Act. Educational institutions across the country, except in Quebec, adopted copying policies that encourage the mass systemic and systematic copying of protected works without payment to the creators. Once these policies were adopted, most educational institutions walked away from their long-standing licence agreements with Access Copyright.

● (1650)

So if the copying policies were not intended by the changes to the act, are they in keeping with the decisions of the Supreme Court that you heard about earlier today?

Following the adoption of the copying policies, the creators' and publishers' only recourse to clarify fair dealing was to bring the matter to the courts. That is why Access Copyright sued York University. In a decision issued in June 2017, the Federal Court unequivocally concluded that the copying policies and practices adopted by York University, which are virtually identical to the policies adopted across the country by educational institutions, including the K-12 sector, are:

> ...not fair in either their terms or their applications. The Guidelines do not withstand the application of a two-part test laid down by the Supreme Court of Canada jurisprudence to determine this issue.

The copying policies are not in line with the Supreme Court of Canada's teachings.

Do they harm writing and publishing in Canada? The York case involved a four-week hearing, during which time the Federal Court judge heard extensive evidence, including the evidence of duelling economic experts. They were presented by both sides. The court looked at York's copying policies and their impact on creators and publishers. After careful examination, the judge found that the policies are arbitrary and unfair, and ultimately result in an unfair "wealth transfer" from creators to educational institutions. Importantly, the court concluded that "any suggestion that the Guidelines have not and will not have negative impacts on copyright owners and publishers is not tenable."

It is important to note that this decision is the only court decision or Copyright Board decision that examines the fairness of the copying policies. There are no other decisions by any court that examine whether 10% or a chapter is fair—only this one.

What, then, should be the true purpose of fair dealing? Here again I think it is instructive to go back to the representations made by the education sector during the legislative committee.

Here is a first example. Steve Wills, at the time manager of government relations and legal affairs for the Association of Universities and Colleges of Canada, stated it clearly:

> First of all, in regard to the educational community, nothing in Bill C-32, for starters, is going to change the revenue going to the collectives such as Access Copyright and Copibec. It's not about saving money. What it is about—the change to fair dealing in particular—is allowing certain educational opportunities that right now sometimes don't occur.

The Honourable Ramona Jennex also helps us understand what the true purpose of fair dealing should be:

> We're not asking for anything for free. The education system, the sector, pays for licences and copyright, and will continue to do so. What we're asking for with these amendments is to have things clarified.

The true purpose of the 2012 amendments, as represented by the education sector to the legislative committee, was to clarify that fair dealing can be relied on by educational institutions when the copying of a work is not covered by licences or easily available through the rights holders, not to do away with collective licensing.

We urge the committee to recommend that this be clearly stated in the act. As the litigation endures, uncertainty around what can be copied challenges educators every day. Creators are deprived of a significant chunk of their income and educational publishers are making tough decisions. Publishers are leaving the educational market, resulting in lost jobs and significantly reduced investments in the creation of Canadian content. This in turn means fewer opportunities and reduced income for creators.

● (1655)

At the end of the day, we all lose when Canadian creators and publishers do not have the economic incentives and ability to continue to create content that reflects who we are, our experiences and values as Canadians.

Thank you.

The Chair: Thank you very much.

We are going to move, mindful of the time, to Mr. Baylis. You have six minutes.

Mr. Frank Baylis: Thank you, Chair.

[*Translation*]

Thank you for your presentation, Ms. Couette.

[*English*]

Thank you, Ms. Levy, for being here.

We are hearing two sides. On one hand, the universities come in, their representatives saying we're paying more and more. On the other hand, we're hearing from authors, publishers, and yourselves as your association saying we're getting less and less.

Can you help clarify that? Do you agree with that? Are they paying more? Are you getting less? If so, what's happening?

Ms. Roanie Levy: We don't dispute that the university sectors may in fact be paying more and more for content. What's important to keep in mind is that the content that they are licensing and paying through their library licences is different from the content that they are copying under their copying policies. We're talking about two different buckets of content. There is some overlap, but very little overlap.

The content that they are licensing is, through their own testimonies before you, mainly journal articles. As an example, CRKN testified that out of $125 million, $122 million is spent with foreign publishers. That content is created often by academics, people who rely on a salary in order to be compensated for their contributions.

The content that is copied historically under the Access Copyright licence, today under their fair dealing guidelines, is mostly books, not journals. This is content that is created by professional authors who rely on royalties for compensation. It is not content that is licensed, by and large, through the library licences.

It's two different buckets of content. The Canadian content that is adapted and customized, that tells our story, is in that "B" bucket, the content that is being copied today for free.

Mr. Frank Baylis: Whatever way it's applied or not, the idea of fair dealing is to give a bit of oil to the system to let people make a couple of copies of a book, or so on. Are you looking to clamp...? Do you want to make money, monetize every single copy, or are you against...?

Can you give us your view of what fair dealing should be? You're not happy with what it is. Should it exist, number one; and two, if it does exist, how should it exist?

Ms. Roanie Levy: Yes, fair dealing should exist. We're not arguing that fair dealing be removed. What's important to keep in mind is that the fair dealing needs to allow a market to take place. The way it's being applied today doesn't allow the educational market to survive.

I think we could be inspired by the way fair dealing is used in other jurisdictions, such as in the U.K. and Australia. The outcome in those jurisdictions is that the copying done by the educational institutions is not allowed under fair dealing. If there's a licence, it has to be paid for. The copying that is done by the students, the self-generated reproduction of works, that is fair dealing. That's what we see in Australia and in the U.K. Both have fair dealing provisions. The mechanisms to achieve that are different in the two jurisdictions, but that is the bottom-line outcome.

● (1700)

Mr. Frank Baylis: They allow the students to say fair dealing is for the students, but the institution has to pay.

Ms. Roanie Levy: That's right. The systematic mass copying that happens by the institutions, for example, through the copying of chapters, and the 10% that gets loaded onto online learning management systems, that gets reproduced in course packs that substitute for the purchasing of books should not be fair dealing. This is what the judge's conclusions were in the York decision.

[*Translation*]

Mr. Frank Baylis: Ms. Couette, Ms. Levy just said that the approach in Australia or the United Kingdom offers potential solutions.

Would Copibec support that approach? What do you think of these solutions?

Ms. Frédérique Couette: That is a vision that we share with Access Copyright. We see it the same way. In our opinion, we should emulate the current provisions in England, the United Kingdom, and New Zealand. It is the same process. Provisions apply from the time a licence is granted.

Section 2 of the Copyright Act defines the term "commercially available". It is already used to limit certain exceptions for education, but that could be extended to section 29, which essentially defines fair dealing. Under section 2, once that applies and after reasonable re arch, if a licence is available at a reasonable cost and within a reasonable time frame, the concept of fair dealing should not available. That would limit this recourse and we would end up exactly—

Mr. Frank Baylis: We are talking about educational institutions, though, and not students.

Ms. Frédérique Couette: Exactly. That would give us a way to allow students to meet their personal research requirements for their homework, for instance, whereas all institutional aspects would be covered by the licence.

[*English*]

The Chair: Thank you very much.

Mr. Bernier.

[*Translation*]

Hon. Maxime Bernier: Thank you very much.

I will share my speaking time with Mr. Jeneroux.

My first question is for you, Ms. Couette.

Do you agree with Ms. Levy about the way the university uses copyright for library copies in general, on the one hand, and what students do in class, on the other? Do you share her view?

Ms. Frédérique Couette: Are you referring to the relative share of acquisitions and licences?

Hon. Maxime Bernier: Yes.

Ms. Frédérique Couette: Since our licence agreements are with the universities, we receive a declaration from them that covers 80% of the books. What they declare is essentially books.

The licence does not cover international publishers. Moreover, the amounts we pay those international publishers are peanuts to them. Where a considerable drop in licence revenues has really been felt is by local publishers, our national publishers in Canada and Quebec.

Hon. Maxime Bernier: So you also agree that, when universities claim they are paying more and more for copyright, that is true on the one hand. On the other hand, you say your revenues are dropping, for the reasons you just explained. Is that correct?

Ms. Frédérique Couette: Absolutely. What the universities are telling you is really that they are paying more for acquisitions, while what they pay us for is reproduction.

Hon. Maxime Bernier: Okay, perfect.

As to the solutions, you said earlier that you really like the regime in the United Kingdom, among other countries. Should Canada's Copyright Act retain the concept of fair dealing for education? If so, does it need to be more clearly defined? Or should we go back to the previous version of the act that did not include that concept for education?

Ms. Frédérique Couette: The concept of fair dealing has always been in Canada's act. It is an integral part of it, just as the collective societies are. It is part of the balance.

The real problem is the way the universities are interpreting fair dealing for education today. If we adopt provisions similar to what we see in Great Britain, New Zealand or Australia, but in another form, that would balance out the situation and secure royalties for institutional and systematic mass reproduction.

● (1705)

Hon. Maxime Bernier: So the criteria have to be tightened up rather than relying on case law or the interpretation of the act by various courts. Is that correct?

Ms. Frédérique Couette: As to the interpretation by the courts, what Ms. Noel said refers to the 2012 interpretation in Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright). This decision did not say that up to 10% of a work or a full chapter could be reproduced. The decision referred to four pages and a half per year per student. That is far from 10%.

I have some figures from declarations by educational institutions. For Quebec, we are talking about 47 million pages for universities and 22 million pages for Cegeps. We survey just 10% of elementary and high schools, and that amounts to 3.6 million pages. Multiplied by 10, that is 36 million pages. So that is very far from the four and half page quota.

I would point out that the Supreme Court ruled that a portion does indeed meet the fair dealing criterion, and I think that amounts to 17 million pages, but that the schools have to pay for the rest. They no longer pay for the rest, however.

Hon. Maxime Bernier: Okay, thank you.

I will hand it over to my colleague.

[*English*]

Mr. Matt Jeneroux: I'll pick up on some of my colleague's line of questioning.

You heard Ms. Noel's comments earlier. I'll give you both a chance to comment on what she said. In particular, take us back to 2011. We have the testimony, and you read some of it into the record, Ms. Levy. Are you then suddenly blindsided by a letter from Ms. Noel on this?

Take us back to before December 5, 2012.

Ms. Roanie Levy: When creators and publishers came before the legislative committee in 2011-12 looking at the Copyright Modernization Act, we were very concerned that the addition of education was going to lead to exactly the situation we're in today, with the education sector abandoning all the licences.

The education sector time and again came to the committee and essentially said that the creators and publishers in the collective were fearmongering; that in fact this was not at all what was intended. It was really for these other uses of other works, which are not covered by the licence, essentially, and that the licence would continue to remain whole and they would pay it.

Are we completely blindsided? We were always concerned that we were going to get to this point, so we were not completely blindsided, but we are a little bit surprised that they did such a quick turn on their position.

Mr. Matt Jeneroux: Madame Couette, do you have any comments on Ms. Noel's earlier testimony?

[*Translation*]

Ms. Frédérique Couette: We were in the same situation. In our case, it was not the end of licence, but as of July 2012, Quebec universities asked us to renegotiate the licences. We had just completed the negotiation in May or June 2012. They were adopted at the end of the month and the Supreme Court issued its decisions in July. The Quebec universities wanted to renegotiate, with the result that the licence decreased from $25.50 in July 2012 to $21 in January 2013. So we were in the same position after the measures were adopted.

The Chair: Thank you very much.

[*English*]

Mr. Masse, you have six minutes.

Mr. Brian Masse: Thank you for your testimony today.

I want to get clarification with regard to the illegal copying that's taking place. I've heard different numbers. What exactly are they and where do the numbers come from? Those have also been used by several witnesses prior to today's testimony. I think they're all using these numbers, the 600 million, as well as some other ones. Where do they come from?

Ms. Roanie Levy: There is a document, which I distributed earlier, that has some of the key numbers in it and explains where they come from. You'll see where the "600 million pages of published works copied every year" comes from.

Mr. Brian Masse: For the record where exactly does that come from?

Ms. Roanie Levy: It comes from a couple of places. The first place is the Copyright Board decision in the elementary/secondary school sector. There were 380 million pages copied there per year.

● (1710)

Mr. Brian Masse: How did they come to that conclusion?

Ms. Roanie Levy: A study was done.

Mr. Brian Masse: I want to make sure because we're hearing that number quite a bit.

Ms. Roanie Levy: Yes, absolutely.

Mr. Brian Masse: If people are following perhaps they want to know.

Ms. Roanie Levy: A study was done and that's where the 380 million came from. Of that 380 million, the Copyright Board concluded that 60% of that is fair dealing, and therefore not compensable.

Mr. Brian Masse: Okay.

Ms. Roanie Levy: The remaining 40% is compensable. So, in fact, there were 150 million pages that still need to be compensated, but the ministers of education are still refusing to pay that. They're claiming the whole thing under fair dealing, even the amount that the Copyright Board said had to be paid for.

Mr. Brian Masse: There's about 150 million pages in outstanding invoices?

Ms. Roanie Levy: Outstanding payments that they're claiming fair dealing on, 380 million pages in total for elementary/secondary.

In the post-sec sector, we did a study on York University. In that case, as a result of the study that looked at the copies loaded on learning management systems and course packs, we see, on average, 360 pages per student per year being copied.

Mr. Brian Masse: Okay. So, it's—

Ms. Roanie Levy: When you use all of that data, on a conservative end, you end up with 600 million pages that have been copied and not paid for. These are copies that are not licensed, nor have transactional licences been obtained for them that are not available under open access licences.

Mr. Brian Masse: Would it be fair to say that as educational age and grade levels increase, that the increasing amount of copyright infringement takes place?

Ms. Roanie Levy: Yes.

Mr. Brian Masse: I don't want to draw assumptions. I'm not going to read the studies.

Ms. Roanie Levy: Yes. No, absolutely.

Mr. Brian Masse: So that's where the particular problem lies. Has that increased and is there any data on that since the decision has been in place? Has the behaviour pattern changed with the decision?

I'll put that aside. Has that increased? Has there been a pattern of behaviour or do we know? These questions may not be fair to you, but I'm trying to get a sense of the scope of what's taking place.

Ms. Roanie Levy: It's hard to tell because we had historical data about what used to be copied, at least part of what used to be copied because before 2013, when they stopped paying, in the post-secondary level they would report to us all copies that were made and included in course packs, in paper course packs.

Today we don't know what gets copied. What we do know is only from the study that we did with York University and in the context of that litigation.

Mr. Brian Masse: Yes.

Ms. Roanie Levy: In that context, 360 pages per student per year were copied.

Mr. Brian Masse: That's going to be pretty onerous too, with digital and a series of different format changes that are more dynamic than ever.

With regard to much of the testimony, we've heard—and you've heard today—that an incremental amount of money is being spent on materials. You're mentioning that Canadian publishing firms in Quebec are down. Is this basically what's happening? Are most things being streamed to three to five publishing conglomerates? Is that really what's taking place or are they not telling the full story here, that their cost for publications is actually going up?

Ms. Roanie Levy: Based on what I heard in their testimonies—and they're in a better position to tell you how much they spend—they are increasing spending on journal articles. This is research material, by and large, not instructional material.

Mr. Brian Masse: Okay, yes.

Ms. Roanie Levy: The material that tends to get copied and used in class for instruction is different from the material that is used for research. That's where you get the science, technical, and medical journal publishers. The five big multinational publishers are in that category. The licences that they have through CRKN are for the STM, science, technical, and medical journals. What gets copied and no longer paid for is the educational content, the trade content, the stuff that is used for instructional purposes.

Like what Frédérique mentioned about the experience in Quebec, and in the rest of Canada as well, what we saw historically was that, of the copies that they used to make and report to us, only about 15% was from STM, science, technical, and medical journals. The rest was books, and that doesn't tend to be licensed through university libraries.

Mr. Brian Masse: Thank you.

The Chair: We're going to move right to Mr. Longfield.

You have five minutes.

Mr. Lloyd Longfield: Thank you, Mr. Chair, and thank you both for coming with detailed information for us. We are trying to get to the bottom of what's fair, not just fair use but fair in terms of legislation.

Mr. Masse mentioned earlier that when it ends up in court, that means we haven't done our job. We've had 21 hearings since the new legislation has come in. What was the relationship before that? Did you have hearings? You're both involved with litigation right now, both of your organizations. It's a class action in one case, and in another case, the litigation is against licences that weren't being paid.

What was it like before this legislation? Was it better or worse?

● (1715)

[*Translation*]

Ms. Frédérique Couette: For our part, Copibec has always negotiated its licences. We never went through the Copyright Board of Canada or any litigation. We have always preferred negotiation. That is still our preference today with the other universities, except for Université Laval. In 2014, Université Laval refused any discussion and would not sit down at the table with us. So we had no choice. In our opinion, that is not the best way to negotiate royalties, but since 2012 that is what we have had to deal with in the case of Université Laval.

[*English*]

Mr. Lloyd Longfield: Thank you.

Ms. Roanie Levy: If I may, I've been at Access Copyright for 17 years. I've been there, in a way, through this whole process, and what I'm going to express is my personal view of what has happened through the years. The Copyright Modernization Act took 15 years.

For 15 years the parties came before committees—sometimes legislative committees, sometimes standing committees—to look at another iteration of the Copyright Act. You had the creators, the writers and publishers, and the collectives on one hand, and you had the education sector on the other hand. Creators and publishers wanted stronger copyright, and the users—in our situation, the education sector, the libraries—wanted more exceptions.

We were at odds with each other for 15 years, and in the context of that tug of war around what the Copyright Act is ultimately going to say, big licences came up for negotiation. It became increasingly difficult for us to sit down at a table and negotiate the licence, and that's why we ended up before the Copyright Board. As the process continues, with these five-year reviews and litigation that takes almost decades to conclude, we are stuck in this tug of war. It is not our preferred situation.

Mr. Lloyd Longfield: Right. I should have mentioned that I was going to share a minute of my time with Mr. Sheehan, but I'm going to touch on this just a little further, because I think we're on to something when it comes to licences.

The intention at the time was that it would be revenue neutral. Licences would continue to be paid; users would be able to have access for the purposes of study and education; institutes would continue to pay licences on their behalf, knowing that students would have access to the material to copy in terms of their studies and research.

Then, at some point, we came off the rails. The licences with the institutions weren't getting covered off. Is that a fair assessment?

[*Translation*]

Ms. Frédérique Couette: I think the Quebec model illustrates a kind of balance. I would not say, of course, that royalties of $13.50 are fair, but at least we are able to sit down around the table. The only reason for this is that the Quebec ministry of culture and communications and the ministry of education and higher education are committed to maintaining a strong publishing industry, which tells stories about Quebec, rather than seeking out what is happening in France, Belgium or elsewhere. If the concept of fair dealing for education is not based on that, if nothing strengthens it to guide the universities and the ministries of education as to interpretation, we would end up with a situation similar to that of Access Copyright. That is ultimately what will happen if nothing is done in Quebec.

[*English*]

Mr. Lloyd Longfield: Thank you.

There are 30 seconds for Mr. Sheehan.

Mr. Terry Sheehan: Very quickly, on the tour, UBC had shown us a chart where course packs used to be 80% usage and 20% digital. Just recently they did a study, and the number has absolutely flip-flopped on that.

As it relates to digital form and the transactions that are happening, a lot of universities are opting out of Access Copyright, etc. Could there be a situation where Access Copyright would sue a university or a content purchaser for use in your repertoire what they had already and legally received permission to use elsewhere?

● (1720)

Ms. Roanie Levy: I think that's a hypothetical, and I can't really answer a hypothetical, especially when it involves suing someone.

In answer to the switch from paper to digital, I think it's important to note that both the Access Copyright licence and the Copibec licence covers a reproduction both in paper and digital. The fact that instead of producing paper course packs, they now just PDF it and upload it on a learning management system doesn't change the impact of consumption of works that are protected by copyright and not paid for. The mechanism to pay for it is in the collective licence, to make it simple and easy for professors across the country to make the reproductions they need to instruct their students, and ensuring at the same time that the payment flows back to the creators.

The Chair: Thank you.

We've going to move to Mr. Lloyd.

You have a very quick five minutes.

Mr. Dane Lloyd: Thank you for coming today. I appreciated your testimony.

I'm going to reference the document here that was provided by the CMEC Copyright Consortium in which they talk about book sales in Canada, book sales in Ontario, Canadian publishing industry profit margin, and Canadian publisher sales of their own titles to 12 institutions.

I am looking for some clarity from you. You don't actually sell books. You are a reproduction company and primarily derive your income from educational institutions.

Do you think that these statistics have any value for us as a committee?

Ms. Roanie Levy: Those statistics don't refer to the reuse rights, the reproduction; that's for sales.

Unfortunately, I'm not in a position to comment about the source of that data and how it marries with our own experience.

Mr. Dane Lloyd: Let's assume, because it is Stats Canada data, that it is probably very accurate.

Would you say that it's not really pertinent for this committee to review book sales when we're talking about copyright? Are they two totally different issues?

Ms. Roanie Levy: One thing to keep in mind is that what gets sold and what gets copied are sometimes different works. A group of works that are not being bought can be copied, so you may see sales revenues go up for this group of creators, but it's another group of creators who get reproduced and not paid for.

The example that we heard here over and over is university libraries spending hundreds of millions, more than ever, on science and technical medical journals, and not paying the reuse rights for the copying of chapters, short stories, and plays that they upload on their learning management systems and share with their students.

There are two different groups of rights holders. One is primary sale, and the other is secondary revenues; one they pay for and one they don't pay for. The impact is not felt the same way. The fact that they pay for one does not give them a free pass to copying the other group of books.

Mr. Dane Lloyd: We're looking at book sales like it's been put in previous testimony: you can't compare the average author to a J.K. Rowling, for example, who is selling millions of books around the world. These book sales are reflecting all books from all authors, including bestsellers. The percentage that is educational books is probably a very small margin as part of the overall book sales market in Canada.

Ms. Roanie Levy: Again, I don't know the source of that data, so I can't really comment about that data per se, but—

Mr. Dane Lloyd: I'll move along to another area.

Ms. Roanie Levy: —generally speaking, I think your comments are accurate.

Mr. Dane Lloyd: Some witnesses have claimed that the increased use of digital content in our age of the Internet has led to a decreasing relevance for Access Copyright as a collective society and, by extension, for copyright. Would you say it's true that Access Copyright is not really involved in the digital era?

Ms. Roanie Levy: Absolutely not. That is not correct.

I think what you need to do is look at the York University case. It was the time—the opportunity—we had to actually see the content that gets used in course packs and on learning management systems at York University. In the context of that litigation, a study was done.

Individual titles were looked at. The titles had to be determined as to whether they were in Access Copyright's repertoire, whether York had licences, and whether they were available on open access. The outcome was that 360 pages per student per year in Access Copyright's repertoire were not being paid for and were not available under open access. That's an average: 360 pages per student per year. That is a huge amount of copying.

● (1725)

Mr. Dane Lloyd: I have a final question. In my conversation with the previous witnesses who came in today, they were talking about competing evidence coming in before the Copyright Board. I was referencing PwC's report, which was commissioned by Access Copyright. You have spoken about the Copyright Board's decision, but they referenced it and said there was another piece of evidence in there, probably from Deloitte.

Ms. Roanie Levy: Yes.

Mr. Dane Lloyd: Can you elaborate on the differences and the contrasts between those reports?

Ms. Roanie Levy: I think one thing that's important to note and got very confused in the earlier panel is which courts or tribunals have looked at the copying guidelines. The Copyright Board did not look at the copying guidelines. It has not said anything about the fairness of the copying guidelines. Only the Federal Court in the York decision has had to examine the copying guidelines—the 10%, the chapter—and determine whether it's fair. It's in that context that there were duelling experts. In fact, there were two on each side. The court concluded unequivocally that the fair dealing guidelines are arbitrary, they are unfair, and they lead to economic harm.

The Chair: Thank you.

Mr. Jowhari, you have a very quick four minutes.

Mr. Majid Jowhari: Thank you, Ms. Levy and Ms. Couette. You were very clear in explaining to us the difference between acquisition and reproduction. We were always trying to find the reason why the cost of acquisition was increasing. Now it's become clear, at least for me, that a lot of that has to do with the articles as well as the publication that's being done and the transition into digital.

One of the other things we heard was that the students get their instruction material either from the textbook store or through the course packs. Usually, the university or the libraries also buy one or two copies and put it in the library. We're also told that the number of course packs that are being created is also drastically reduced. In one example, I think we were in Halifax and we were looking at the university. They said they have one course pack for all their curriculum. We were asking how that could be. Where are they getting the material?

Help me understand. If the textbooks are not showing up at the textbook store to buy and the course packs are not created and printed—I know you touched on it being digital now—and it's not part of the acquisitions, where are the students getting the material they need to get instructed? How do 600 million pages show up?

Ms. Roanie Levy: Educational institutions across the country have what is called "learning management systems". They're essentially digital platforms that allow professors and students to upload content and share it with a class. They've gone from taking the material that was published and produced in course pack form to making it available on learning management systems.

It's not that they're not using the content anymore because it's not in a paper course pack. They're still using the content. They've now moved it from paper to digital. It's still being used. This we saw in the York University case, where, because it was part of the discovery process of the case, we had a look at not only the paper course packs that they produced but at everything the university posts on learning management systems.

Mr. Majid Jowhari: Does the university actually scan the textbook and put the content in a PDF?

Ms. Roanie Levy: Sometimes they scan it. Sometimes they already have it in a PDF. Sometimes they extract it from a larger PDF. There are many ways they get it in digital form and then upload it onto learning management systems.

To be clear, the study that we did at York University did not have anything to to with links, so any links were excluded. It was just documents that were posted on the learning management systems, and, importantly, in that study we needed to see whether or not they already had the rights for those works, because you have heard of hundreds of millions of dollars being spent on accessing content, and those claims were made to the judge as well. York said at the beginning of the process that most of what they copy they have licences for.

By the end of the hearing, they had to abandon that claim completely because they could not marry the works they upload on learning management systems and copy in course packs with the licences that they have. It is not a question of faulty paperwork. It's because these are different works.

● (1730)

The Chair: Thank you.

For the final minute, Mr. Masse.

Mr. Brian Masse: We're going to have hearings and we'll make a report to the minister and the minister will then respond to the report. Then I imagine it would take, if there are going to be some changes, legislation, which would be another review.

As this has progressed, are there things in the interim you would suggest could be done from your perspective right now?

Ms. Roanie Levy: There are things that can be done immediately by communicating from the government's perspective whether they believe this approach is right or not. Just signalling to the education sector is a start.

The government has also committed to making some changes to the Copyright Board of Canada process, and while that does not touch on fair dealing, at least what is left after the ravages of fair dealing, at least what is left after all of that has been taken off, is something that is enforceable and usable. That would be another suggestion.

Mr. Brian Masse: Has your organization conveyed that to the minister at this time?

Ms. Roanie Levy: Yes, we have.

Mr. Brian Masse: Would you be willing to share that information with the committee?

Ms. Roanie Levy: Absolutely.

Mr. Brian Masse: Thank you.

The Chair: If you forward that to the clerk, that would be great.

On that note, we could have spent two hours with you. I want to thank you both for coming in today and sharing your experience and knowledge with the committee.

On that note, we will adjourn.

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